

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

JAN 4 2002

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIANO HERNANDEZ-MUNIZ,

Defendant-Appellant.

Nos. 01-2068 & 01-2107
(D.C. No. CIV-00-777-BB/KBM)
(D. N.M.)

ORDER AND JUDGMENT *

Before **EBEL**, **KELLY**, and **BRISCOE**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The cases are therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Mariano Hernandez-Muniz, a federal prisoner proceeding pro se, requests a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2255 habeas petition. He appeals separately the district court's ruling on the merits of his petition and its later refusal to grant him a COA.

To obtain a COA, Hernandez-Muniz must make "a substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c). This court has reviewed his request for a COA, his appellate brief, the district court's order, as well as the entire record before us. We conclude that his petition does not meet the standard quoted above.

We GRANT Hernandez-Muniz's motion to amend his application for a certificate of appealability. We DENY the request for a certificate of appealability and DISMISS these appeals.

Entered for the Court

Mary Beck Briscoe
Circuit Judge